

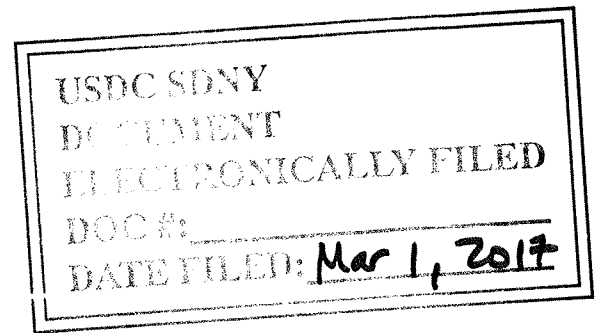
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

—v—

Yuri Lebedev and Trevon Gross,

Defendants.



15-cr-769 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

At the end of trial proceedings today, the Court addressed an issue raised by counsel concerning potential witnesses for Mr. Gross, potential conflicts of interest as a result of a single attorney representing several of those potential witnesses, and a process for resolving any such issues in a manner that safeguards the trial process and schedule. To memorialize and clarify the process discussed, the Court issues the following order.

A. Background

By way of background, with the consent of counsel for all parties in this case, trial in this matter was scheduled to commence on February 13, 2017. On February 15, 2017, the jury was empaneled and sworn, and the Court, based on the representations of counsel and with their consent, informed the jury that trial was scheduled to last 3-4 weeks. In a conference held on March 1, 2017, the Government represented that it plans to rest its case on or before Tuesday, March 7, with any defense case commencing thereafter.

Prior to the commencement of trial, on January 31, 2017, counsel for Trevon Gross moved for an order compelling the Government to immunize certain members of the Helping Other People Excel Federal Credit Union ("HOPE FCU") Board whom Gross represented he wanted to call as witnesses at trial. *See* Dkt. No. 375. The Government, in its February 6, 2017 response, first reiterated a position it had already communicated to Mr. Gross's counsel, that the

former board members, and HOPE FCU's former CEO, might face criminal exposure of relevance to any prospective testimony they might offer. *See id.* at 5-6. At that time, the Government also alerted the Court, and counsel for Mr. Gross, that potential conflicts of interest might affect the representation of those potential witnesses, because a single lawyer, Cedric Ashley, represented all of the HOPE FCU Board members, HOPE Cathedral, and HOPE FCU's former CEO, Charles Blue. *See id.* at 5-6 & n.9. The Court denied Gross's motion on February 14, 2017.

During the third week of trial, on February 28, 2017, the Government indicated that it no longer intended to call any members of the HOPE FCU Board, or HOPE FCU's former CEO, in its case-in-chief, nor offer any of them non-prosecution agreements or use immunity. On March 1, 2017, counsel for Gross indicated that he may call all of the HOPE FCU Board members, and HOPE FCU's former CEO, Charles Blue. In response, the Government again noted its belief that many of these prospective witnesses could face potential criminal exposure, and again raised the issue of Mr. Ashley's potential conflicts of interest in his representation of the witnesses, of which counsel for Mr. Gross was previously placed on notice through the Government's February 6 submission. The Government proposed that the witnesses should be afforded the opportunity to consult with independent, non-conflicted counsel regarding potential testimony.

B. Orders

In light of the above procedural history, and to safeguard the trial process and avoid any unwarranted request for a continuance, the Court hereby ORDERS as follows:

First, to the extent this has not yet been done, counsel for the Defendants must serve all potential witnesses with trial subpoenas by 3:00p on Thursday, March 2, 2017. Thus, if Mr. Gross intends to call any former HOPE FCU Board members, or HOPE FCU's former CEO, Charles Blue, he must serve trial subpoenas by 3:00 p.m. on Thursday, March 2, 2017.

Second, if any such witness served with a subpoena wishes to consult with court-appointed independent counsel in light of the potential conflict issues noted above, he or she must appear at 10:00 a.m. on Friday, March 3, 2017, in Courtroom 318 of the Thurgood

Marshall United States Courthouse, 40 Foley Square, New York, New York. The Court will ensure that there are un-conflicted attorneys from the SDNY Criminal Justice Act Panel available to consult with and represent any such witnesses who wish to have (and are eligible to have) independent counsel appointed.

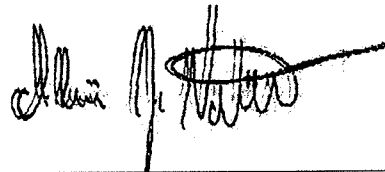
Third, if any witness served with a trial subpoena who is implicated by the potential conflict noted above is considering testifying while being represented by Mr. Ashley, that witness shall appear at 10:00 a.m. on Friday, March 3, 2017, in Courtroom 318 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York, so that the Court may conduct a hearing pursuant to *United States v. Curcio*, 680 F.2d 881 (2d Cir.1982).

Fourth, counsel for Mr. Gross must serve this Order by 3pm on Thursday, March 2, 2017, on any witness served with a trial subpoena who may be implicated by the potential conflict issue discussed above.

SO ORDERED.

Dated: March 1, 2017
New York, New York

3/1/2017

A handwritten signature in black ink, appearing to read 'Alison J. Nathan', written over a horizontal line.

ALISON J. NATHAN
United States District Judge